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SUBJECT: ARGENTINA DISCUSSES SHIFT IN POLICY TOWARD ILLICIT
DRUG USE

11. (SBU) Summary: Minister of Justice Anibal Fernandez announced this week that the GoA intends to redirect its counternarcotics efforts away from the pursuit of drug users in order to make more resources available for investigating and prosecuting drug traffickers. He argues that Argentina's courts and prisons are overwhelmed and overflowing with drug users. Although Fernandez's thinking on the initiative appears well advanced, sources in his Ministry note that this is still a work in progress and that such a shift, likely implying legislative changes, will not happen immediately. Some press reports indicate that not all elements of the Government support the proposal. The Minister, in clarifying remarks to the local press following his speech in Vienna, has stressed he is not proposing the legalization of drugs and that his proposed policy shift is intended to improve, not weaken, GOA counter-narcotics efforts. End Summary.

TREATMENT NOT PRISON FOR ADDICTS

12. (SBU) GOA Minister of Justice, Security, and Human Rights Anibal Fernandez announced in Vienna at the 51st session of the UN Commission on Narcotic Drugs (CND) that the GoA is contemplating a shift in emphasis in its treatment of illicit drug users. Fernandez contends that current policies are overwhelming Argentina's courts and flooding its prisons, at great cost to the GOA. He notes that between 70 to 80 percent of cases in the courts are related to drug use, and that only 2.8 percent result in convictions. The criminalization of drug use in Argentina, he states, inhibits users from getting the treatment they need and has been a drain on counternarcotics resources that could be put to better use in pursuing traffickers. Fernandez made similar remarks during a working lunch in Buenos Aires on March 6 with visiting FBI official Thomas Fuentes and the Ambassador. In that conversation, and from the information reported from other Ministry sources, it is clear that the emphasis of this policy shift is on giving lower priority to arresting and convicting individual users and putting more emphasis on breaking up trafficking rings and on creating a health and social services network to treat addicts and other illicit drug users. Fernandez and sources in the Ministry claim that this proposed shift in the treatment of illicit drug users would bring Argentina into line with countries like Brazil

and Uruguay in the region and Spain, Switzerland, and the Netherlands in Europe.

MISUSE OF RESOURCES

13. (SBU) In his discussion with the Ambassador and Tom Fuentes on March 6, Fernandez relayed how expensive it was to incarcerate users -- US\$ 1,500 per month -- and that only 2-3 percent are ever convicted. He noted the costs and the large backlogs caused by the thousands of cases in the federal court system. (Most Argentine provincial legislatures have not authorized provincial jurisdiction/prosecution in drug cases, leaving them to be prosecuted in federal court.) He argued that it would be more effective to concentrate on dealers and trafficking networks and getting convictions for these traffickers. Fernandez explained that federal law enforcement had seized more marijuana last year than the year before, most of it coming from Paraguay. He also said that Peru is the largest source of cocaine coming to and through Argentina, followed by Bolivia. He explained that much of his forces' current efforts are focused on going after the big Peruvian networks and that he feels he has more support for his counternarcotics efforts from President Fernandez de Kirchner than he had previously.

RECOGNIZING WHAT ALREADY EXISTS

14. (SBU) Daily newspaper La Nacion, often critical of Kirchner administration policies, reported in a front page article March 12 that not everyone in the Government supports decriminalization. Most prominently, the paper cited opposition from the head of the Argentine drug policy agency SEDRONAR, Jose Granero, and claimed that the President herself has a "more conservative position" on the matter. However, Minister Fernandez, in his public statements and in comments to the Ambassador, noted that he has the President's (general) support on counternarcotics issues. Granero, who was in Vienna at the CND, was reportedly surprised by Fernandez's announcement of the proposed policy change. A number of political opposition figures and the Catholic Church have spoken out against the proposed shift as well. The article also quotes several judges who assert that de facto decriminalization is already the case. According to the article, most federal judges oppose prosecuting drug users for possession of small quantities. Emboff heard a similar comment from an Argentine police officer.

CORRECTING FAILED POLICIES

15. (SBU) Fernandez offered his personal assessment that Argentina's counternarcotics efforts have been a failure. During the March 6 encounter, he said that "in my country, since the (1989) drug law was sanctioned until last year, there hadn't been a single conviction for money laundering and that in 2006 only two drug cases were brought to oral trial." A large part of the problem of prison overcrowding with drug users and small-time dealers and the relative ineffectiveness of the police reflects shortcomings in the current penal code. Under the Argentine judicial system, judges are responsible for and direct investigations. Prosecutors and judges are unable to decide which cases to pursue -- they must, by law, investigate and prosecute all cases that come before them. Prosecutors are unable to offer plea bargains. Testimony of paid informants is not allowed. Undercover agents are allowed in drug investigations but rarely used. Most of these shortcomings are addressed in ongoing efforts to modify the criminal procedural code, but until that occurs, decriminalizing drug use will not necessarily result in more effective use of law enforcement agencies or the courts.

16. (SBU) Fernandez formed a scientific advisory committee last year to help inform his policy decision. While the press reports that the committee generally supports the decriminalization of drug usage, its work continues. It is analyzing an extensive survey on illicit drug usage commissioned by the committee involving some 50,000 households. The Minister's thinking on this policy is

evidently well advanced, but many of the particulars of the proposed policy shift remain to be worked out, and could include legislative changes and budget reallocations. An unattributed federal government source is cited by La Nacion as saying that decriminalization is an issue to be debated and reviewed, that the Government has "nothing concrete," and that much remains before sending anything to Congress. As noted earlier, Minister Fernandez has now claimed that he is not proposing decriminalization.

17. (SBU) Comment: Polls consistently report that Argentines' number one concern is public security. The public links its high feelings of insecurity with reports of growing drug use in the impoverished shanty towns surrounding Buenos Aires and other major urban centers. The new government seems more focused on the issue than the previous regime did -- something that Fernandez himself has told us. He seems to sincerely believe that lowering the law enforcement priority (and perhaps penalties) given to possession for personal use will help make the GOA anti-crime effort more effective, freeing law enforcement and court resources to go after traffickers. He believes that the current approach catches lots of little fish, but allows the big ones to slip away.

18. (SBU) But there are risks in the new approach. Experience shows that to get to the big fish you often need to start with the little ones. Moreover, a government policy that could be interpreted as overly lenient on illicit drug use could engender some public pushback given the narcotics-street crime link. We have an excellent and long-standing relationship with Fernandez and his advisers. As he moves forward with his policy, the Embassy will work with him to try and limit unintended, negative impacts on our bilateral and regional counternarcotics efforts. The main impediments to more effective counternarcotics remain Argentina's outdated penal code -- limiting the judicial tools available to law enforcement and prosecutors -- and the inefficient courts.

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